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DATE: January 9, 2008

TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS (08012)

FROM: 
Chris Reynolds, Deputy Secretary of State, HAVA Activities

SUBJECT: Use of HAVA funds – County Security Measures, Electronic Poll Books (Electronic Rosters) and Poll Worker Assistive Devices

The Secretary of State's Office recently received several e-mails from the Election Assistance Commission (EAC) staff regarding the use of Help America Vote Act of 2002 (HAVA) funding for equipment purchases. The EAC is the federal oversight body for HAVA and the authority for guidance on appropriate use of HAVA funding.

Specifically, the EAC provided guidance on the use of HAVA Section 251 funds for:

- County security measures pursuant to decertification and recertification orders issued August 3, 2007;
- Electronic Poll Books or Electronic Rosters; and
- Electronic devices, such as personal digital assistants loaded with FAQs and other subject matter "how to" assistance, for use by poll workers at polling places (e.g. Asked).

Section 251 funds are to be used by states (and counties) to meet requirements found in Title III of HAVA (Sections 301, 302 and 303).

County Security Measures

Costs for improving security of voting systems pursuant to the decertification/recertification orders issued by the Secretary of State on August 3, 2007, as revised, have been deemed allowable costs because they are necessary to ensure the secure use of voting systems. Specifically, EAC staff opined that the costs of creating an "air gap," or "reimaging" the voting system are allowable. Several counties also asked about the cost of technical assistance from vendors for reloading the trusted-build version of the election management system software and reinstallation of the vote tally firmware. Those costs are also allowable.

According to the EAC staff:

"...the purchase of additional equipment to implement the air gap strategy would be an allowable use of 251 funds. This equipment is not replacing existing

equipment and purchase of additional equipment to supplement original purchases is a difference between California's proposal and the Florida issue that you referenced in earlier correspondence. Since you consider this part of the state's efforts to meet the voting system requirements of HAVA section 301(a), the individual purchases will not require pre-approval by EAC based on earlier guidance regarding voting equipment and registration database expenses."

Electronic Poll Books

EAC staff opined that these devices are not part of the voting system because they will not be used to burn voter activation cards in California at this time. Therefore, Electronic Poll Books do NOT fall within the definition of "voting system" as specified in HAVA (see Section 301 (b)). My survey of other states that have deployed these devices, which I conducted before receiving the EAC guidance, confirms that other states did not use HAVA Section 251 funding to purchase Electronic Poll Books. However, California created a "minimum requirements payment" program in California pursuant to the provisions of HAVA Section 251 (b)(2)(B). This section of HAVA allows states to designate an amount of Section 251 funding (approximately \$11.6 million statewide) to use for the purpose of "improving the administration of elections" (i.e. in ways not directly related to Title III requirements). The proportionate share of this funding was allocated to each county through the Voting System Upgrade (301) contracts. Each county's minimum requirements payment allocation can be found in its 301 contract at Exhibit A (page 3 of 4), Section D (9) "Use of Funds." Counties may claim up to this maximum amount of funding for Electronic Poll Books minus any claim for other minimum requirements payment reimbursement (i.e. the county may NOT claim the use of these funds for more than one purpose; once the reimbursement is sought for Electronic Poll Books or any other use, no further claims for that amount may be made against the minimum requirements payment).

According to the EAC staff:

"Although electronic poll books can be considered part of a voting system under certain circumstances, you have indicated that California will no[t] use them to activate voter cards or to interact with the voting equipment."

However, in a follow-up e-mail, the EAC stated:

"...the electronic poll books would be considered an improvement to the administration of federal elections and you could use up to the minimum payment to fund them since they are not part of meeting the Title III requirements."

Poll Worker Assistive Devices

EAC staff opined that these devices, while helpful to improve the administration of elections, are similarly NOT directly related to HAVA Title III requirements. Therefore, the cost for these devices may also be reimbursed pursuant to California's minimum

requirements payment program as specified above. Again, each county's minimum requirements payment allocation can be found in its 301 contract at Exhibit A (page 3 of 4), Section D (9) "Use of Funds." Counties may claim up to this maximum amount of funding for poll worker assistive devices minus any claim for other minimum requirements payment reimbursement (i.e. the county may NOT claim the use of these funds for more than one purpose; once the reimbursement is sought for poll worker assistive devices or any other use, no further claims for that amount may be made against the minimum requirements payment).

According to the EAC staff:

"The Ask Ed system is generally an allowable use of either HAVA 101 or 251 funds and several states have purchased this system. This system would be viewed as an improvement to the administration of federal elections and the minimum payment amount restrictions would be applicable. However, since the per unit cost is under \$5000, the individual purchases do not require pre-approval."

In summary, to the extent that a county has a remaining allocation of a minimum requirements payment in its Voting System Upgrade (301) contract, the county may seek reimbursement of Electronic Poll Books or poll worker assistive devices, such as AskED, up to the amount of the remaining minimum requirements payment balance. However, counties may NOT "double-count" the minimum requirements payment – it may only be used once. Therefore, counties may need to make choices about the relative need and benefit of these claims – and other costs eligible for reimbursement under the minimum requirements payment program – to the extent that the total costs for the claims exceed the counties minimum requirements payment allocation and, therefore, "compete" for funding from that source.